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Written Testimony Opposing House Bill 1146, An Act Concerning Cross-Endorsements

Good afternoon Senator Musto, Representative Jutila and distinguished members of the Government Administration and Elections Committee. My name is David McGuire. As the Staff Attorney for the American Civil Liberties Union of Connecticut, I am here to oppose House Bill No. 1146, An Act Concerning Cross Endorsements.

Electoral fusion allows two or more political parties to nominate the same candidate for a particular office. Candidates are free to seek multiple nominations and political parties are free to nominate any qualified candidate. A candidate who earns multiple party nominations appears on the ballot once for each party, and all votes for the fusion candidate must be combined when determining the winner of an election. This bill would eliminate electoral fusion in Connecticut not just by prohibiting cross-endorsement but by prohibiting political parties from nominating anyone who is not one of their own current members. This would infringe on political parties' First Amendment rights of association by preventing them from nominating the candidates of their choice.

In *Tashjian v. Republican Party of Connecticut*, the U.S. Supreme Court suggested that this type of legislation is unconstitutional.¹ "Were the State ... to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with non-members would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, '[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'"²

That language from *Tashjian* was cited in a 2011 case in which the U.S. District Court for the District of New Mexico struck down a law very similar to the bill at issue here. That court held the law to be a violation of the party's First Amendment right to association because it restricted the party's choice

¹ 479 U.S. 208 (1986).

² *Id.* at 215.

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of candidates.³ A Colorado court cited the same language in striking down a state law that required major party nominees to be enrolled in the party for at least twelve months prior to the party's primary election.⁴

Connecticut is one of seven states that allow electoral fusion and eliminating it would disproportionately affect up-and-coming third parties. Because third-party membership tends to be much less robust than that of the two major parties, third parties are more likely to nominate a non-member. By preventing them from doing so, this bill would infringe on the constitutional freedom of association. Furthermore, there is evidence that electoral fusion helps increase voter turnout because it allows people to express support for a third party's platform while voting for a candidate who has more than an outside chance of winning the general election. Evidence from New York suggests that people who vote for members of third parties would not vote at all if fusion were outlawed there.⁵

The committee should reject this bill because it threatens the First Amendment rights of political parties and their members and because it would deny the people of Connecticut the benefits of electoral fusion. Those benefits include increased voter turnout, stronger third parties and more participation in the political process by citizens of the state.

³ *Woodruff v. Herrera*, No. Civ. No. 09-449 (D. New Mexico March 31, 2011)

⁴ *Colorado Democratic Party v. Meyer*, Civ. No. 88CV7646 (Colo. Dist. Ct. 1988)

⁵ Melissa R. Michelson & Scott J. Susin, *What's in a Name: The Power of Fusion Politics in a Local Election*, *Polity*, Vol. 36 (Jan. 2004), pp. 301-33